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Final Regulation Agency Background Document

Agency name	State Board of Social Services
Virginia Administrative Code (VAC) citation	22 VAC 40 -260
Regulation title	Agency Placement Adoptions-Subsidy
Action title	Amend Subsidy Regulation as a result of periodic review
Document preparation date	October 22, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style, and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

22 VAC 40-270, which provides guidance on the appeal rights of adoptive applicants and parents, will be repealed. An appeals provision will be added to 22 VAC 40-260 to replace this regulation.

22 VAC 40-260 addresses adoption subsidy, which is a money payment or service provided to adoptive parents on behalf of a child with special needs. The regulation provides criteria by which a child is defined as a child with special needs prior to and after adoption finalization, and describes the types of subsidy agreements and payments, application requirements, and conditions for terminating adoption assistance agreements. Amendments are proposed to add an appeals provision, clarify several existing requirements, and improve accountability in the administration of the subsidy program.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board of Social Services approved the repeal of 22 VAC 40-270, Appeals, and amendments to 22 VAC 40-260, Subsidy, on October 22, 2003.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 63.2-217 of the Code of Virginia provides that the State Board shall adopt such regulations as necessary or desirable to carry out the purpose of Title 63.2 of the Code of Virginia. Section 63.2-900 of the Code of Virginia provides that a local board shall adopt regulations for the provision of foster care services directed toward the permanent planning for children in the custody of or placed by local boards. The provisions of 22 VAC 40-260 are directly related to the statutory authority, by facilitating the placement of children in permanent, adoptive homes.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

Many of Virginia's children in foster care who cannot return home have physical, mental, and emotional challenges which make them difficult to place in adoptive homes. Adoption subsidy facilitates their placement into adoptive homes by providing the adoptive family with additional resources in order to meet the child's special needs. The regulation facilitates permanency through adoption for children with special needs who might otherwise languish in foster care. The regulation is, therefore, essential to their health, safety, and welfare. 22 VAC 40-260 establishes administrative guidelines necessary for local agencies to administer adoption subsidy and is essential for this reason.

Proposed amendments clarify the definition of special needs (used to determine eligibility for subsidy), increase accountability in the administration of subsidy and provide clarity on several other topics. The regulation was established in 1989 and amendments are necessary to

incorporate references to the 1997 Adoption and Safe Families Act and other statutory mandates which have taken affect since 1989.

One amendment pertains to appeal rights. Virginia's adoption assistance program receives funding from Title IV-E of the Social Security Act. Title IV-E requires the State to provide for granting an opportunity for a fair hearing to any individual whose claim for IV-E benefits is denied or not acted upon within reasonable time. Appeal rights for adoptive parents and applicants have been added to 22 VAC 40-260. As a result, the need for a separate regulation singly addressing appeals is eliminated and appeal rights are retained. Thus, 22 VAC 40-270, Appeals, will be repealed.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Many of the proposed changes are intended to clarify existing requirements and provide practice guidance. Substantive changes are as follows:

Definition of special needs in the Definitions section is revised to reflect language in a later section, which addresses determining whether a child has special needs for the purpose of subsidy eligibility.

Language regarding when reasonable efforts have been made to place a child without subsidy is replaced with less restrictive language that requires the child be registered and photo-listed with AREVA. This is consistent with Title IV-E requirements regarding reasonable efforts.

Appeal rights for adoptive parents and applicants have been added.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The advantage to the public, agency, and Commonwealth in retaining and amending the regulation is that adoption subsidy, which facilitates the adoptive placement of children with special needs, will continue to be administered according to state and federal requirements. The proposed amendments clarify key requirements. There are no disadvantages to the public or Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement in proposed regulation	Proposed change in final regulation and rationale
20.E.1.f.	n/a	<p>A new provision, E.1.f., is added to allow for child care to be paid as a maintenance payment. This change is in response to public comment. The current regulation does not specifically reference child care. However, it provides that special service payments may be provided to maintain the same level of service that the child received in foster care. In practice, agencies provide child care through subsidy under the category of special service payments.</p> <p>Adding reference to child care under the maintenance section of the regulation serves two purposes. It provides for continuation of child care as part of subsidy, while allowing the new language to remain in the section on special service payments. The new language requires that special service payments be directly related to individual characteristic which made the child difficult to place. Public comment indicated that the new language might prohibit agencies from providing child care through subsidy</p>

Public comment

Please summarize all comment received during the public comment period following the publication of the proposed stage, and provide the agency response. If no public comment was received, please so indicate.

Commenter	Comment	Agency response
Chesterfield/Colonial Heights Department of Social Services	The proposed regulation provides that the special service payment must be directly related to the child’s	The regulation has and continues to allow adoptive families to apply for subsidy after finalization, provided the diagnosis is not more than 12 months

	<p>individual characteristic that made the child difficult to place, or to a condition that existed at the time of placement but was not identified until after final order. The new language may be restrictive beyond intent. Children removed due to abuse/neglect develop serious problems later in life that are not connected to the characteristic that made them difficult to place. In addition, child care is a service often needed by adoptive parents that is not related to the individual characteristic. The suggestion was made to move child care to the maintenance category, and to revise the proposed language to something less restrictive.</p>	<p>old. In addition, agencies can enter conditional subsidies before finalization, at the request of the adoptive parents. Conditional subsidies are used when services are not needed prior to finalization, but may be needed after. Therefore, the regulation already provides for subsidy for children and families who do not sign subsidy agreements prior to finalization.</p> <p>A new section will be added to section 20, D, 1, Maintenance payments, adding a provision that child care may be paid under the maintenance category of subsidy payments.</p>
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All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	An “adoption assistance agreement” may be for a federal, state or local subsidy.	Reference to local subsidy is deleted, as local subsidies are not used.
10	n/a	“Child with special needs” means any child in agency custody who is legally free for adoption.	Reference to “legally free for adoption” is replaced with “state has determined is unlikely to return home because of termination of parental rights.” The latter is a more concrete term. In addition, reformatting clarifies that it is one of three main factors in defining

			child with special needs.
10	n/a	“Child with special needs” means a child who cannot be placed within a reasonable time due to certain factors.	This provision is replaced with a more simplified reference to individual characteristics that make the child hard to place. Reference to “reasonable period of time” is deleted because it is subjective.
10	n/a	n/a	A third factor in defining child with special needs is added, referring to reasonable efforts to place without subsidy. Reasonable efforts are currently referenced in a later section. Adding it to the definition makes the regulation consistent with Title IV-E.
10	n/a	“Child with special needs.” For conditions diagnosed after final entry, no more than one year can have elapsed since the diagnosis.	This provision is replaced with a more direct reference, providing that the diagnosis is not more than 12 months old.
n/a	20.A.1.	n/a	In determining eligibility for subsidy, basic criterion is added relative to age, custody and placement. This is consistent with §§63.2-1300 and 63.2-1302 of the Code of Virginia.
20.A	20.A.2.	Item A.2. addresses determining the child’s eligibility for subsidy.	This is replaced with reference to determining that the child has special needs. A child with special needs is eligible for subsidy. This section is amended to conform to the definition in section 10.
20.A.2.c	20.A.2.b.(2)	Characteristics that make a child hard to place are a hereditary tendency, congenital problem or birth injury.	These characteristics must be verified by a medical/psychological statement, in keeping with the current requirements for documentation of special needs and diagnostic reports.
20.A.1.b.(2)	20.A.2.c.(2)	Reasonable efforts to place without subsidy are demonstrated in two possible ways: local recruitment efforts; or AREVA registration and photo listing for 30 days.	Reasonable efforts are demonstrated if the child has been registered with AREVA and featured in the photo listing. This change is consistent with Title IV-E requirements and will expedite the adoption process for children who are difficult to place.
20.A.2.c.	20.B.3.	In determining a child’s eligibility after final	Reference to “no more than one year” is replaced with “a diagnosis that is not

		order, no more than one year can have elapsed since the diagnosis.	more than 12 months old.” This is consistent with eligibility determination for children prior to final order.
20.B.1.-3.	20.C.1.-3.	State and conditional subsidies are paid from state and local funds.	References to state and local funds are replaced with Comprehensive Services Act pool funds.
20.B.3.c.	n/a	In determining eligibility for conditional subsidies, reasonable efforts to first place the child without subsidies are not required.	This reference is removed, making the criteria for conditional subsidy consistent with that for federal and state subsidies.
20.C.	20.E.	n/a	A provision is added requiring negotiation of subsidy payments with adoptive parents. This is consistent with Title IV-E.
20.C.1.a.	20.E.1.a	n/a	A provision is added for not providing a maintenance payment when it is determined through negotiation that a payment is not needed. This supports the above negotiation requirement.
20.C.1.c.	n/a	A negotiated maintenance payment shall be approved by the Department.	This requirement is removed because it is no longer necessary. Removal will ease the burden on families and agencies.
20.C.1.e.	20.E.1.d.	Increases in payment amounts shall be made when the child reaches a higher age grouping and/or statewide foster care rates are increased.	A qualifier is added to clarify that maintenance rates will be increased under these circumstances for children already receiving the maximum allowable basic maintenance rate. This is consistent with the Title IV-E provision that the amount of payment cannot exceed what the child would have received had the child been in foster care.
n/a	20.E.1.f.	n/a	A provision is added to specify that child care, if provided through subsidy, is considered a maintenance payment. Refer to the section above on changes since the proposed stage.
20.C.2.a.	20.E.2.a.	Special service payments are used to meet the child’s dental needs.	Payments are used to meet non-routine dental needs. Adoptive parents are expected to be responsible for the routine dental needs of their adopted children.

20.C.2.a.	20.E.2.a.	n/a	The special service payment must be directly related to the child’s characteristic that made the child difficult to place or a physical, mental or emotional condition that existed but was not identified prior to finalization. This clarifies the distinction between maintenance and special service payments.
20.C.2.b.(2)	20.E.2.b(2)	Special service payments can be used to purchase eyeglasses.	This provision is removed. Adoptive parents are expected to pay for eyeglasses for their adopted children. This is consistent with the amendment regarding dental needs.
20.C.2.g.	20.E.2.g.	Providers shall be approved according to Department purchase of service requirements.	The Department no longer has purchase of service requirements. This provision is removed and replaced with guidance that payment rates shall not exceed prevailing community rates.
20.C.3.a.(1) and (4)	20.E.3.a.(1) and (4)	Non-recurring expenses shall include attorney and child placing agency fees, not to exceed rates set by the Department.	Reference to rates set by the Department is removed, as the Department no longer sets rates.
n/a	20.F.2.a.	n/a	A provision is added requiring the placing agency to maintain responsibility for payments and services identified in the agreement, regardless of where the family lives. This is consistent with state and federal laws protecting the interests of adopted children in interstate situations.
20.F.1.b.	20.G.1.b.	The subsidy agreement will be terminated when the child reaches age 18 unless the child has a physical or mental disability or an educational delay resulting from a physical or mental disability.	The requirement that the educational delay be the result of a physical or mental disability is removed, as this is already established in 20.G.1.a. The amended provision allows for maintenance payments to continue for a child turning 18 during the child’s senior year of school, if the child is expected to graduate by the end of the school year in which the child turns 18.
n/a	20.G.4.	n/a	When a child receiving adoption subsidy enters foster care, the local agency may renegotiate the subsidy

			agreement with the parents. Any renegotiated agreement must receive concurrence from all parties to the agreement. This is consistent with the Title IV-E provisions for negotiating and terminating subsidy agreements.
n/a	20.H.	n/a	Regulation 22 VAC 40-270, Agency Placement Adoptions, Appeals is being repealed. An appeals provision is added to 22 VAC 40-260, Subsidy.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The proposed regulatory action will have no impact on the institution of the family and family stability. The regulation sets forth guidelines for agency administration of adoption subsidy. Adoption subsidy, administered according to uniform regulations, expedites the matching and placement of children in foster care with appropriate adoptive families and reduces the time children languish in the foster care system. In addition, adoption subsidy provides continuing support to the child and adoptive family until the child reaches 18 or 21 years of age. This helps reduce the occurrence adoption disruptions and dissolutions.